

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

BRIAN LEE DEMAREE,
Petitioner.

No. 2 CA-CR 2015-0312-PR
Filed December 1, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20121458002
The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Renee T. Bennett, Assistant Attorney General, Tucson
Counsel for Respondent

Dean Brault, Pima County Legal Defender
By Alex D. Heveri, Assistant Legal Defender, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

H O W A R D, Judge:

¶1 Brian Demaree seeks review of the trial court's order denying his petition for post-conviction relief filed pursuant to Rule 32.1(b), Ariz. R. Crim. P., in which he argued the court lacked jurisdiction to render judgment against him. We grant review but deny relief.

¶2 Demaree pled guilty to criminal impersonation, admitting he had impersonated his deceased father in order to gain access to his military retirement pay. The trial court suspended the imposition of sentence, placed Demaree on a three-year term of probation, and ordered him to serve a thirty-day jail term as a condition of probation. Demaree sought post-conviction relief, arguing, as he had in a previous motion to dismiss, that the court lacked subject-matter jurisdiction because federal law preempted state law regarding federal military retirement benefits, including the fraudulent receipt of such benefits. The court summarily denied relief, and this petition for review followed.

¶3 First, as the state noted below, Demaree's notice was untimely because it was filed nearly a year after his sentencing. Ariz. R. Crim. P. 32.4(a). His jurisdictional claim, raised pursuant to Rule 32.1(b), is not expressly exempted from the timeliness requirement of Rule 32.4(a). Although we acknowledge that subject-matter jurisdiction cannot be waived, *see State v. Jackson*, 208 Ariz. 56,

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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¶ 21, 90 P.3d 793, 799 (App. 2004), Demaree has cited no authority suggesting the timeliness requirements of Rule 32.4(a) do not apply to jurisdictional claims. As this court has observed, the time limits of Rule 32.4(a) are not grounded in waiver. *State v. Lopez*, 234 Ariz. 513, ¶ 8, 323 P.3d 1164, 1166 (App. 2014).

¶4 Even assuming Demaree can raise this claim in an untimely proceeding, he is not entitled to relief. As the trial court observed, we rejected the precise jurisdictional argument he now raises in a memorandum decision denying relief pursuant to a petition for review filed by his codefendant sister. *State v. Demaree*, No. 2 CA-CR 2015-0152-PR (memorandum decision filed Jul. 29, 2015). Demaree has offered no basis for us to conclude that our reasoning in that decision does not apply with equal force here.

¶5 We grant review but deny relief.